

**Congress of the United States**  
**Washington, DC 20515**

May 30, 2012

Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
400 Seventh Street S.W., Eighth Floor  
Washington, D.C. 20024

Dear Mr. Pollard:

We are writing regarding your May 11<sup>th</sup> letter to the Members of the California State Legislative Conference Committee, where you discuss your concerns with provisions in the Homeowners Bill of Rights. Your letter, which to the best of our knowledge was not requested by the Conference Committee, also questions the needs for states to enact laws seeking to assist homeowners at risk of foreclosure, on the grounds that such laws needlessly delay foreclosures.

After a careful review, we have concluded that your letter is devoid of any meaningful substantive analysis, takes the path of least resistance, which is most beneficial to the financial industry but most harmful to at-risk homeowners, and directly contradicts the FHFA's statutory mission of protecting the public interest. We find this unworthy of the high standards taxpayers have come to expect of their federal regulators, particularly in the wake of the regulatory failures that led up to the 2008 financial crisis.

***Issues Outside of FHFA's Mission***

We believe your letter fails to meet one of FHFA's core mandates to act in a manner consistent with the public interest.

Congress created the FHFA to ensure the safe and sound operation of the government sponsored enterprises in a manner "consistent with the public interest". Given this congressional mandate, we are perplexed that you would not include in your letter any analysis of the harm the proposed California law may have on the safety and soundness of the enterprises or on the public interest. Instead, after offering your comments on two specific provisions (without clearly articulating whether any fixes would address your concerns), you devote more than half of the letter to a series of unsubstantiated assertions about the inadvisability of new state laws to protect homeowners – which, in your view, needlessly delay foreclosures and encourage litigation. Frankly, your expressed concern for "increasing legal risks for lenders and investors" is not one we would expect to hear from an independent regulator acting in the best interests of the taxpayers – though we certainly would expect to hear it from a regulated industry.

Your letter comments on pending state legislation and even offers opinions on *existing statutes*, including California's non-judicial foreclosure process and the scope of California's tenant protection laws. Yet it does so in an unsubstantiated manner that demonstrates a clear bias towards the lending industry's preferred position. Such advocacy on behalf of private industry, particularly in a matter related to existing state law, is a very questionable activity for an independent federal regulatory agency to undertake, let alone one with an expressed mandate to act in a manner consistent with public interest.

Even if we accept the premise that commenting on pro-consumer state-level legislation is an appropriate activity related to the agency's core duties, your letter addresses issues that are not under FHFA's primary jurisdiction. For example, the letter comments on pending legislation's definition of "robo-signing." If robo-signing facilitates unfair, deceptive or abusive practices, the Consumer Financial Protection Bureau would have primary federal responsibility. If such practices constitute or facilitate federal criminal fraud, the Department of Justice would have investigative responsibility.

Equally concerning, your comments against a consumer's private right of action are nearly identical to a May 10, 2012 press release from the California Bankers Association (see attached). It has been well documented that servicers have caused unnecessary problems and delays in modifications, which in some cases have led to unnecessary foreclosures – a fact that your letter blatantly ignores. Every homeowner should be entitled to seek appropriate remedies through our judicial system if they believe such an action is warranted. Though you asserted that state laws may result in unnecessary delays and litigation, you failed to demonstrate with any rigorous analysis how this would harm public interest.

More generally, significant portions of the letter also appear to stand in direct conflict to FHFA's statutory duties, including (1) the duties to "permit bona fide tenants who are current on their rent to remain in their homes" and to "maximize assistance to homeowners and...to minimize foreclosures," and (2) the duties to support "resilient national housing finance markets."

It is concerning that you would lobby against legislation intended to achieve these exact goals, including protecting bona fide tenants and minimizing foreclosures. The pending legislation also intends to ensure that lenders and servicers comply with existing mortgage lending and servicing laws. Their failure to do so harms national housing finance markets. We are perplexed as to how such a position represents an action consistent with the public interest.

#### ***Lack of Expertise on Issues Addressed in the Letter***

Unfortunately for a regulatory agency that oversees such an important segment of the mortgage market, it does not appear from your letter that your office has adequate expertise on the specifics of California law to offer such sweeping commentary.

For example, significant portions of the "Foreclosure Delays" section appear to be copied and pasted directly from testimony you gave at an Oversight and Government Reform Committee field hearing in New York in March. This raises the question of whether your concern about efforts to mitigate foreclosures is specific to California law, or whether you are ideologically opposed to foreclosure mitigation in general. We note that there are significant differences between New York and California foreclosure laws—for example, New York is a judicial foreclosure state, while California is not.

Your letter also raises other questions about your familiarity with the relevant law. It suggests that existing federal law addresses the myriad concerns about lender and servicer abuses. Yet the servicing standards established by the national housing settlement only extend for three-and-a-half years. Meanwhile, the federal Protecting Tenants at Foreclosure Act (PTFA) is scheduled to expire on December 31, 2014. Hopefully, the PTFA will be extended and the Consumer



Financial Protection Bureau will enact strong permanent mortgage servicing standards. But to suggest that a state government can rely on a federal law that has not yet passed and federal regulations that have not yet been enacted displays either ignorance on your part or an attempt to mislead. Moreover, the letter directly conflicts with Congress' intent in establishing a national floor, not a ceiling, for tenant protections after foreclosure. The PTFA asserts state and local laws may be enacted that "provides longer time periods or other additional protections for tenants." By attempting to force the federal standard into pending state legislation, FHFA is violating the spirit of PTFA.

It is inappropriate to offer this sort of commentary on behalf of a federal regulatory agency, when you do not appear to have demonstrated a capacity for authoritative analysis to provide well-informed advice, and in a manner consistent with the public interest. We believe your comments indicate prioritization of the mortgage lending industry's views over compliance with your agency's mandates—in particular, support for homeowners with mortgages owned or guaranteed by the Enterprises. For this reason, we believe your lobbying is inappropriate and we have referred your letter to the FHFA's Inspector General, the U.S. Department of Justice and the U.S. Government Accountability Office in an effort to seek guidance as to whether your lobbying efforts and positions comply with applicable statutes.

Sincerely,

Zoe Lofgren

Mike Thompson

Sam Lane

Laura Richardson

Doris O. Matsui

Lizzy Woolsey  
Pete Stark

Greg Esho

Melanie Watt

Michael Wittbrodt

Juan D. Cisneros

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CC: Inspector General Steve A. Linick, Federal Housing Finance Agency; Attorney General Eric Holder, U.S. Department of Justice; The Honorable Gene Dodaro, U.S. Government Accountability Office

List of Signers in Alphabetical Order:

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